



Marsha S. McLaughlin, Director

www.howardcountymd.gov

FAX 410-313-3467

TDD 410-313-2323

October 2, 2009

TECHNICAL STAFF REPORT

Petition Accepted on June 24, 2009

Planning Board Meeting of October 22, 2009 (Advisory Authority Rules)

Zoning Board Hearing to be scheduled

Case No./Petitioner: ZB 1081M – Murray Hill PSC, LLC

Location: Sixth Election District
East side of Gorman Road approximately 1,000 feet northeast of Skylark Boulevard
Tax Map 47, Grid 2, Parcel 4; 9880-9910 Gorman Road

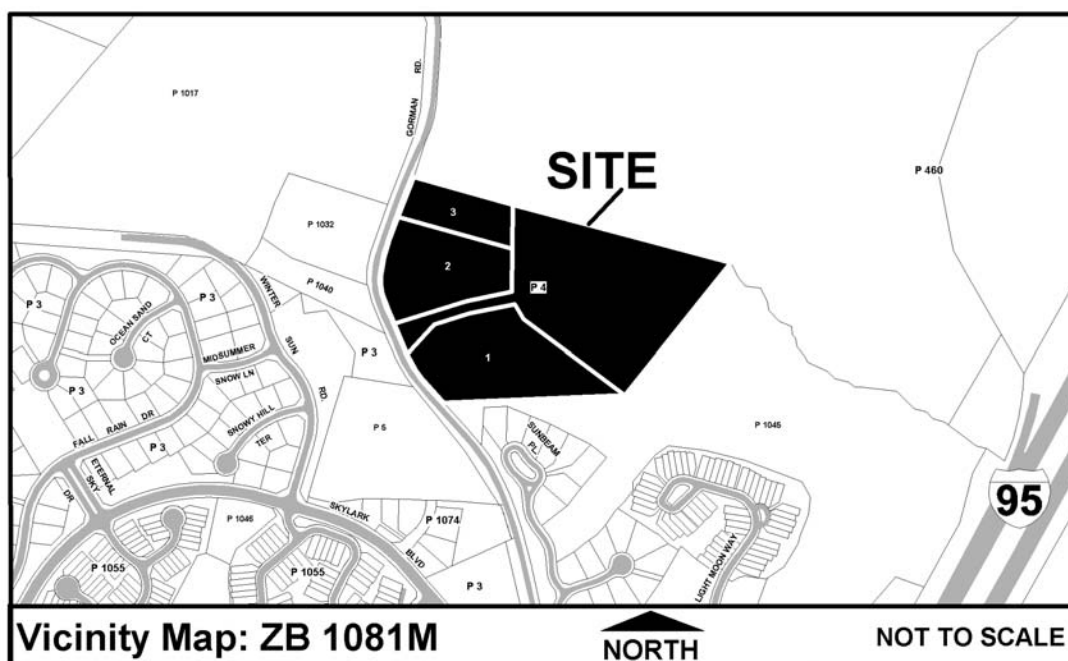
Area of Site: 18.62 acres (the "Property" or "Site")

Current Zoning: PSC, with Preliminary Development Plan for an Age-restricted Adult Housing Development

Proposed Zoning: R-SA-8

Department of Planning and Zoning Recommendation:

APPROVAL

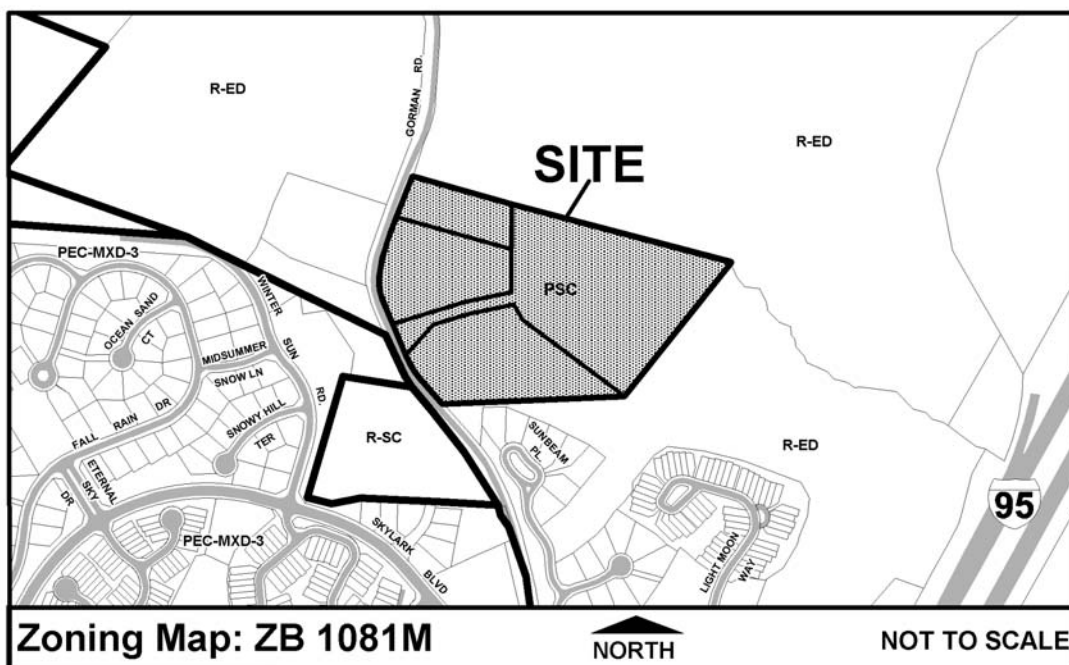


I. DESCRIPTION OF PROPOSAL

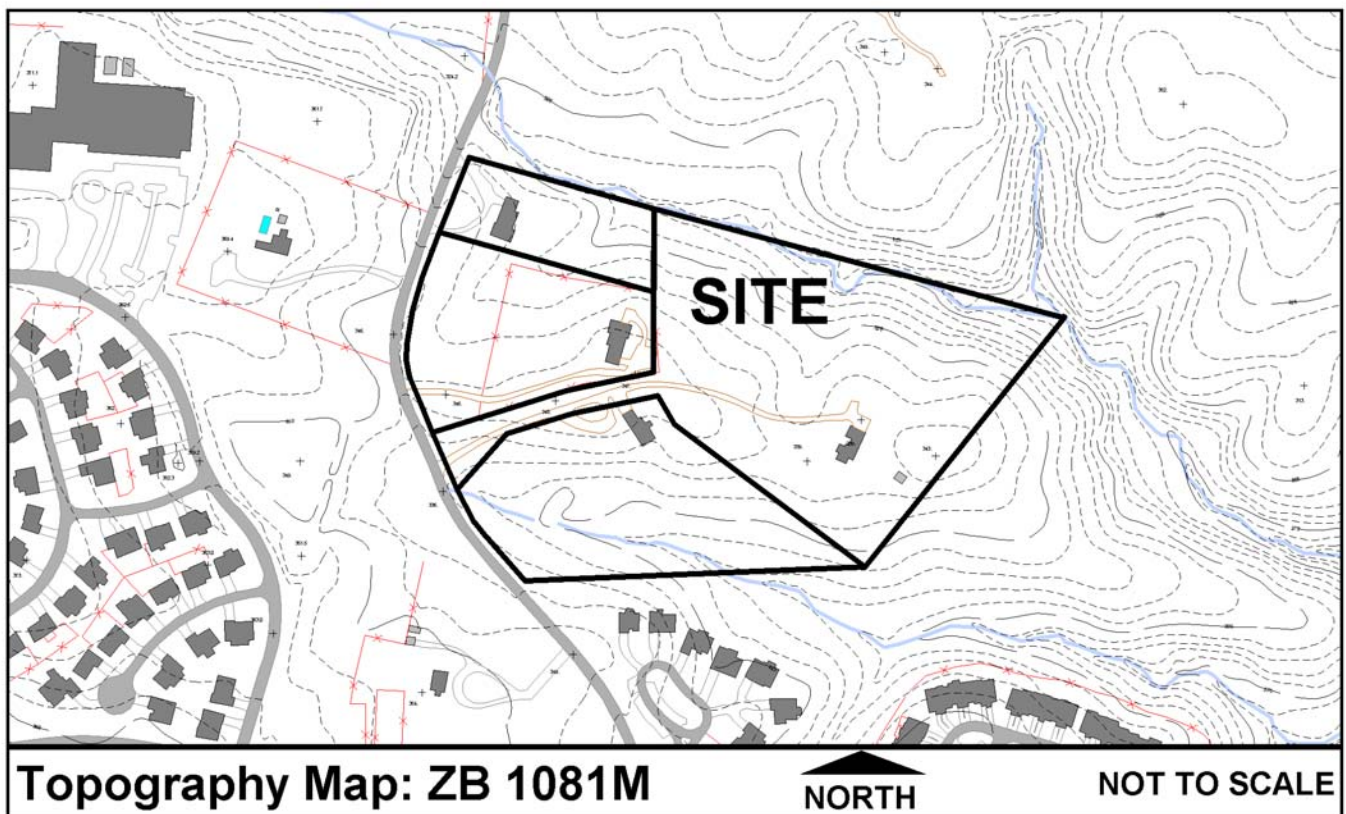
- The Property was originally rezoned in Zoning Board Case No. ZB 1041M from the R-ED (Residential: Environmental Development) District to the PSC (Planned Senior Community) District, with a Preliminary Development Plan for an Age-restricted Adult Housing Development comprising apartment units, single-family attached units and semi-detached units. The Petitioner proposes a Zoning Map Amendment to rezone the Property from the current PSC District designation to the R-SA-8 (Residential: Single Attached) District.
- The Petitioner contends that the evaluation on the issue of mistake in zoning ("Mistake") for this petition should be based upon the premise that the rezoning of the Property to the current PSC District zoning constituted a mistake because the economic trends upon which the rezoning was based have now been reversed, a factor which was unknown at the time of the rezoning and became known with the passage of time. There is no allegation of substantial change in the character of the neighborhood ("Change").

The Petitioner contends that the Property was rezoned to PSC based on assumptions that the strong "empty nester" market would continue and that the proposed development was compatible with the surrounding residential neighborhood. Since the approval of Zoning Board Cases 1041M and 1066M, there has been a dramatic change in economic conditions that has proved the assumptions to be incorrect over time.

The Petitioner states that the market for age-restricted adult housing units can now be described as weak, tentative and languishing. In 2005, the strength of the senior market was established upon a robust resale market for existing homes, gainful returns on retirement investments, and confidence in the stability of upward economic trends and that now these conditions have been reversed.



The Petitioner further states that according to SDAT records, the resale market for existing homes has become sluggish with a projected two-year supply available; the value and return on retirement investments have plummeted dramatically and the consequent outlook on economic trends has been severely shaken. Sales of senior housing units in Howard County are reported at less than two per month, while new home sales of non age-restricted units are approximately 18 per month. The construction of new age-restricted development on the Property would be imprudent and unnecessary given the lack of market interest or capacity. Additionally, considering the slow sales rate and oversupply of age-restricted units, construction funding for new age-restricted development is currently unavailable. Given the projected continuation of this trend, the PSC zoning renders the Property unusable and unsalable, thus the current zoning has no viable development potential and therefore the PSC zoning constitutes a mistake.



II. ZONING HISTORY

- A. **Case No.** **ZB 1066M**
 Petitioner: **Murray Hill PSC, LLC**
 Request: **To amend a Preliminary Development Plan for an age-restricted adult housing development to increase density to 215 dwelling units including 39 Moderate Income Housing Units.**
 Action: **Granted, September 21, 2007 with an amended Preliminary Development Plan and Criteria.**
- B. **Case No.** **ZB 1041M**
 Petitioner: **Murray Hill PSC, LLC**
 Request: **To rezone 18.61 acres from R-ED to P-SC with a Preliminary Development Plan for 139 age-restricted adult housing units including 14 Moderate Income Housing Units.**
 Action: **Granted, May 16, 2005 with Preliminary Development Plan and Criteria as submitted to the Board and as amended non-substantively at the public hearing.**

Subject Site and Surrounding Area

- With the 1961 Comprehensive Zoning Plan, the Site and all surrounding properties were zoned R-20. This R-20 zoning was maintained by the 1977 Comprehensive Zoning Plan.
- The 1985 Comprehensive Zoning Plan maintained the R-20 zoning for the Site, and for the properties to the northwest, north, east and south. The properties across Gorman Road to the west and southwest were zoned PEC.
- With the 1993 Comprehensive Zoning Plan, the Site and other adjacent properties previously zoned R-20 were rezoned to R-ED. The PEC properties across Gorman Road remained zoned PEC. Later, the Emerson property was rezoned from PEC to PEC-MXD-3 in Zoning Board Case No. 979M.
- The zoning for the Site and the surrounding area remained predominately the same with the 2004 Comprehensive Zoning Plan, except that Parcel 5 across Gorman Road to the southwest was rezoned from PEC to R-SC as Amendment No. 47.01.

III. BACKGROUND INFORMATION

A. Site Description

- The Property is comprised of the four lots in the Waskey Property subdivision, which was recorded in 1982 when the Site was zoned R-20. It is irregular in shape and has frontage on Gorman Road.

Each of the lots is improved with a single family detached dwelling. At the northwest area of the Site is Lot 3, and the dwelling on this lot is located relatively close to Gorman Road and the eastern rear half is wooded.

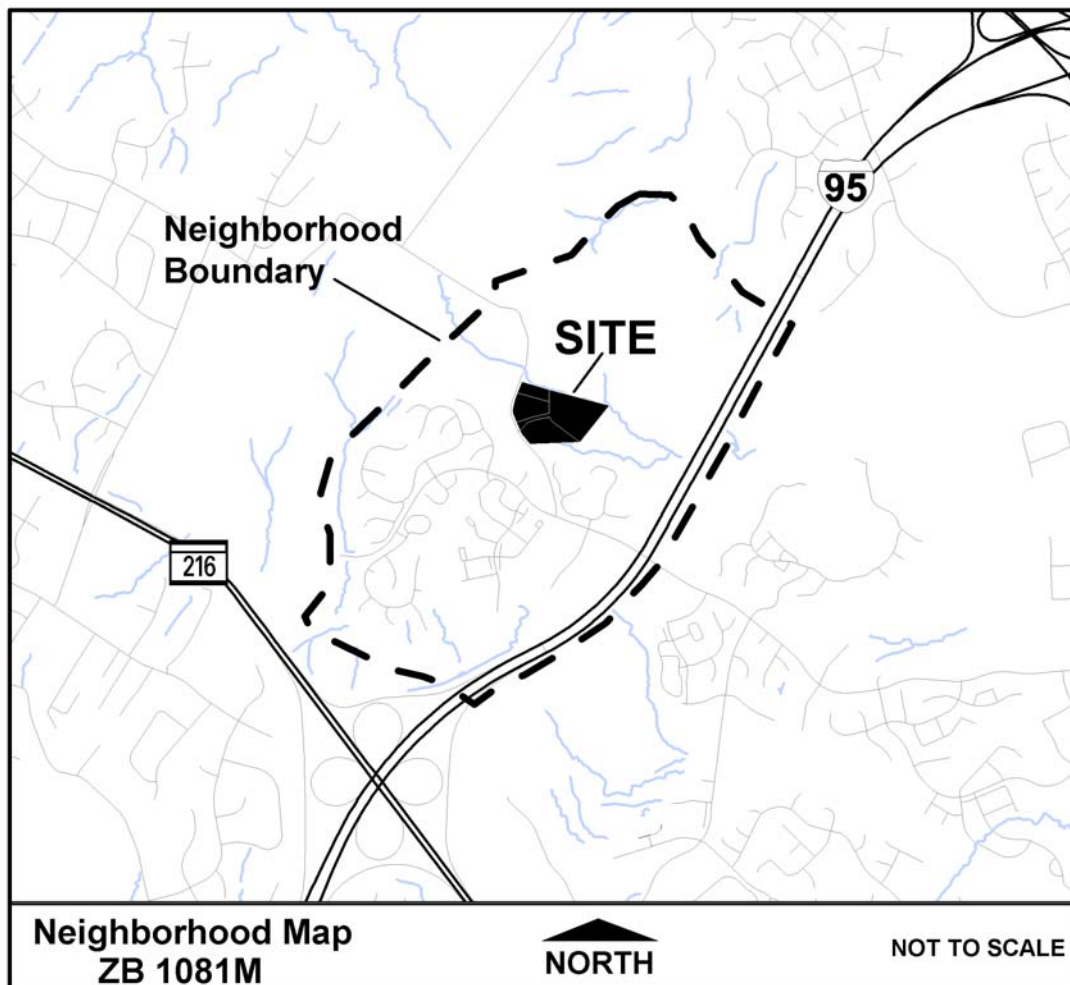
Adjoining the south side of Lot 3 is Lot 2, which is predominately open and the dwelling is located further back from the road near the southwest corner of the lot. Further to the south is Lot 1 on which the dwelling is located in the north near the dwelling on Lot 2. The front yard of Lot 1 is open, but most of the rest

of the lot to the south is wooded. There is an existing pond in the area in the front yard area. Lot 4 is situated to the east behind all the other lots, and is accessed by a long driveway which extends between Lot 1 and Lot 2. The central area of Lot 4 is open, but the north, east, and south areas of the perimeter are wooded.

- The topography of the Site is rolling. The highest point is in an area generally to the west of the dwellings on Lot 1 and Lot 2. From this point the Site slopes down generally to the north and south, with a very slight slope down to the east to the dwelling on Lot 4.

B. Site Development Plan History

SDP 06-039 (Westover Glen) was granted Technically Complete status on July 11, 2006 for 143 age-restricted adult housing units and 15 Moderate Income Housing Units (as amended). On July 17, 2009 the Division of Land Development granted approval to submit a bulk parcel sketch plan instead of a site development plan for revisions if the requested rezoning to R-SA-8 is granted.



C. Vicinal Properties

- **To the north of the Site is Parcel 472, which is approximately 124 acres and is zoned R-ED.**

The area of Parcel 472 which adjoins the Site is a wooded stream area. To the north of this wooded area this parcel is an open field. This property is apparently used for a wholesale nursery, and there are many greenhouses and other structures located well to the east from Gorman Road down a long driveway.

- **The adjoining land to the east and south of the Site is zoned R-ED and is Open Space Lot 36 of the Emerson Section 1 Area 1 subdivision.**

Lot 36 is almost entirely wooded and is Department of Recreation and Parks property. A short distance further to the south are single family detached lots in the same subdivision with dwellings fronting on Sunbeam Place.

- **Across Gorman Road to the southwest is Parcel 5, which is zoned R-SC and is improved with a two-story frame, single family detached dwelling fronting on Gorman Road.**

The properties across Gorman Road to the west of the driveways for Lots 1, 2 and 4 on the Site are zoned PEC-MXD-3 and are several open space lots. Past these open space lots are single family detached dwellings along Winter Sun Road and other streets within Emerson.

- **To the northwest of the Site across Gorman Road the area is zoned R-ED and there are Parcel 1040, which is improved with a two-story, frame single family detached dwelling, and Parcel 1032, which is the site of the Gorman Crossing Elementary School and the Murray Hill Middle School.**

C. Roads

- **Gorman Road has two travel lanes and a variable paving width within a proposed 80 foot wide right-of-way. The posted speed limit is 30 miles per hour. Gorman Road is a designated Scenic Road in this area.**
- **Access, visibility and sight distance were approved with SDP 06-039 and any modifications associated with revised plans would be subject to any new required sight distance studies. A public sight easement area was recorded for the Property as F-06-170.**
- **According to data from the Department of Public Works, the traffic volume on Gorman Road east of Stephens Road was 6,131 ADT (average daily trips) as of 2007.**

D. Water and Sewer Service

- **The Property is within the Metropolitan District and is within the 6 to 10 Year Service Area for Water and Sewer according to the Howard County Geographic Information System maps.**

Development on the Property would be served by public water and sewer facilities. Public water and sewer extensions would be implemented to serve the Site.

E. General Plan

- **The Property is designated Residential Areas on the Policies Map 2000-2020 of the 2000 General Plan.**
- **Gorman Road is depicted as a Minor Collector on the Transportation Map 2000-2020 of the 2000 General Plan.**

F. Agency Comments

The following agencies had no objections to the proposal:

1. Department of Recreation and Parks
2. Department of Fire and Rescue
3. Howard County Health Department
4. Department of Inspections, Licenses and Permits
5. Howard County Office on Aging

G. Adequate Public Facilities Ordinance

- **The petition is subject to the Adequate Public Facilities Ordinance. Any Site Development Plan for a residential development on the Property would subject to the requirement to pass the test for adequate road facilities and adequate school facilities.**

IV. EVALUATIONS AND CONCLUSIONS

A. Evaluation of the Petition Concerning the Change Rule:

- **The Petitioner defines the neighborhood boundary as I-95 and the new Emerson community to the southeast and east; the southern limit of Skylark Boulevard and surrounding residential neighborhoods to the southwest; the dogleg of Gorman Road and the community at the intersection of Murray Hill Road and Gorman Road west/northwest; and the stream valley to the north. The Department of Planning and Zoning finds that the area of the neighborhood boundary proposed by the Petitioner is excessively large for such a relatively small site. The boundaries of the neighborhood as defined by the Department of Planning and Zoning are depicted on the map on Page 5.**
- **There is no allegation of substantial change in the character of the neighborhood by the Petitioner and the Department of Planning and Zoning concurs that there has been no substantial change in the character of the neighborhood since the 2004 Comprehensive Zoning Plan was approved.**

B. Evaluation of Petition Concerning the Mistake Rule:

- **The Department of Planning and Zoning concurs with the Petitioner that the ZB 1041M PSC zoning of the Property may be considered a mistake on the basis that the assumptions relied upon by the Zoning Board at the time have been shown to be invalid by the passage of time.**

The Decision and Order for ZB 1041M stated that the rezoning to PSC “will accomplish the purposes of the PSC District by providing single-family semi-detached, attached and apartments units that are restricted to households with at

least one member who is 55 years or older residing there, together with numerous design features, amenities and services to meet the need of seniors as supported by the Board's Findings of Fact 2, 3, and 11". Finding of Fact 11 states "...the proposed development was designed to meet the strong "empty nester" market and that the development would incorporate universal design features concerning the age-related nature of the development".

In the same Decision and Order, it is stated that the location of the PSC District and the Age-restricted Adult Housing development will help to achieve the goal of Policy 4.3 of the General Plan, of providing an adequate supply of senior housing for that fast growing segment of Howard County's population. The word "adequate" in this context implies an "acceptable amount" of housing, so it may be inferred that the Zoning Board assumed at that time that the number of new dwelling units proposed in ZB 1041M would be constructed and would become part of an acceptable overall total of Age-restricted Adult Housing dwelling units (as would the increased number of dwelling units later approved in Zoning Board 1066M).

- However, in the relatively short period of time between the approval of ZB 1041M and ZB 1066M and now, the current market for Age-restricted Adult Housing dwelling units in Howard County is generally considered to be extremely low, due in part to a perceived overabundance of such units and the related lack of available financing for new projects. So the assumption of the Zoning Board that the Age-restricted Adult Housing dwelling units proposed in those Zoning Board cases would be necessary to achieve a suitable total of such units is apparently no longer correct, because that suitable total perhaps is already achieved.
- This issue of a possible overabundance of Age-restricted Adult Housing units was mentioned in the evaluation of the recently approved ZRA-103, which amended the PSC District regulations to allow new PSC Districts to function as an overlay zone, so that a property may still be developed using the underlying zoning. The ZRA-103 provision does not help in the case of the Property, however, because this particular PSC District was approved prior to ZRA-103.

C. Relation to the General Plan

- The petition for a rezoning to R-SA-8 implies a residential redevelopment of the Property, and therefore, the petition is in harmony with the Residential Areas land use designations for the vicinity of the Property.
- Similarly to the PSC District, the proposed R-SA-8 District would require a minimum of 10 percent of the dwelling units to be Moderate Income Dwelling Units (MIHU). In this manner, the petition is in harmony with General Plan Policy 4.2 to provide affordable housing.

D. Appropriateness of Zoning District

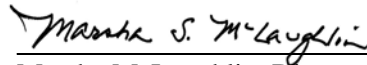
- In consideration of the character of the vicinity which includes single-family attached and detached, and the developed R-SC and R-SA-8 areas, a proposal to rezone the Property to R-SA-8 is not unreasonable. R-SC, with a much lower maximum density of four dwelling units per acre, is less likely to be practical for the relatively small Property. The eight dwelling units per acre in R-SA-8 is more realistic, is not dissimilar to the density approved for the PSC development, and does provide the 10 percent MIHU.

- In ZB 1066M, 215 units were approved which represents a density of 12 units/net acre (based on net acreage of 17.96). Under the current proposal for R-SA-8 zoning, density of 8 units per net acre would be permitted and the potential maximum density for the Site would be 143 units including 10 percent MIHUs.

IV. RECOMMENDATION

APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that the request to rezone the Property from PSC to R-SA-8 be **APPROVED**.

 10/2/09
Marsha McLaughlin, Director Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

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